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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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AZ CORP COMMISSION
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2014 DEC 9 PM 1 10

IN THE MATTER OF CAREFREE 34, INC./
OFFICE ON EASY STREET, INC. dba VENUES
CAFÉ,

COMPLAINANT,

vs.

LIBERTY UTILITIES CORPORATION f/k/a
BLACK MOUNTAIN SEWER CORPORATION,

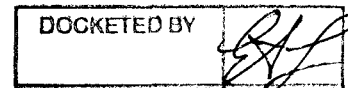
RESPONDENT.

DOCKET NO. SW-02361A-13-0359

Arizona Corporation Commission

DOCKETED

DEC 09 2014



PROCEDURAL ORDER
(Denies Motion by the Town of
Carefree)

BY THE COMMISSION:

On October 22, 2013, Carefree 34, Inc./Office on Easy Street, Inc. dba Venues Café ("Café" or "Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Liberty Utilities Corporation f/k/a Black Mountain Sewer Corporation ("Company" or "Respondent") alleging rate discrimination in its charges for sewer service. Complainant further alleges that the increase is unaffordable and unreasonable.

On October 30, 2013, Respondent filed an Answer to the Complaint stating that the Company is charging the rate authorized by Decision No. 71865 (September 8, 2010).

On November 4, 2013, by Procedural Order, a Procedural Conference was scheduled on November 19, 2013, to discuss the issues presented in the Complaint arising from Decision No. 71865.

On November 19, 2013, Ms. Catherine Marr who owns the Café appeared and the Company and the Commission's Utilities Division ("Staff") appeared with counsel. The Café's owner and the Company's counsel indicated that they had previously tried to reach a resolution of the issues and had gone through mediation with Staff without a successful resolution of the issues raised in the

1 Complaint. Further, the attorney for the Company stated that it is charging the approved tariff rate
2 which was established for a particular type of commercial establishment, such as the Café, based on
3 the then current Arizona Department of Environmental Quality ("ADEQ") Engineering Bulletin No.
4 12 ("Bulletin") pursuant to Decision No. 71865.¹ Staff counsel added that it is very difficult to
5 change an approved rate absent a rate case.

6 It was further discussed that the Complainant could file a request with the Commission
7 pursuant to A.R.S. § 40-252, to reopen the rate case proceeding in order to reconsider and/or modify
8 the rates established in Decision No. 71865 in Docket No. SW-02361A-08-0609. Subsequently,
9 after further discussions, the Complainant and the Company were unable to resolve the Complaint
10 and since an action had not yet been filed by the Complainant pursuant to A.R.S. § 40-252, a hearing
11 was scheduled.

12 On January 14, 2014, by Procedural Order, a hearing was scheduled on April 24, 2014.

13 On April 21, 2014, the Complainant filed a petition and request for action by the Commission
14 in Docket No. SW-02361A-08-0609 pursuant to A.R.S. § 40-252.

15 On April 23, 2014, by Procedural Order, this proceeding was continued pending the outcome
16 of Complainant's request to reopen the rate case pursuant to A.R.S. § 40-252.

17 On September 19, 2014, the Complainant filed a Motion to Reschedule Hearing ("Motion")
18 because there had been no action taken on the Complainant's petition to reopen the rate case pursuant
19 to A.R.S. § 40-252. Attached to the Complainant's Motion as an exhibit was a copy of a letter to the
20 Company that announced a "Notice of Termination" based on the disputed billing charges
21 (\$9,197.84) which have arisen from sewerage service under the tariff established in Decision No.
22 71865.

23 On September 23, 2014, by Procedural Order, a hearing was scheduled on October 28, 2014.
24 It was further ordered that no disconnection of service be effectuated, if at all, until after a
25 Commission Decision is rendered in this proceeding. Further, Staff was directed to be present at the
26 proceeding and to be prepared to participate if required.

27
28 ¹ The Bulletin established sewerage rates for restaurants based on either the "chair count" of the establishment or the
number of meals served per day.

1 On October 17, 2014, Respondent filed a Motion to Compel Response to Data Requests
2 ("Motion to Compel"). The Respondent requested on expedited ruling based on the upcoming
3 hearing date.

4 On October 20, 2014, by Procedural Order, a telephonic procedural conference was scheduled
5 to address the Motion to Compel on October 23, 2014.

6 On October 20, 2014, Complainant filed a Motion for Continuance of Rescheduled Hearing
7 citing numerous reasons why more time was required to prepare for the hearing.

8 On October 22, 2014, the Company filed its response to the Company's motion requesting a
9 continuance and a request that the Complainant be ordered to pay its bill.

10 On October 23, 2014, at the procedural conference, Complainant appeared through its officers
11 and the Company and Staff appeared with counsel. The parties discussed the issues related to
12 preparing for the hearing and it was agreed that Complainant would file its responses to the
13 Company's data requests by the end of the business day on October 27, 2014.

14 On October 24, 2014, by Procedural Order, the proceeding was continued as agreed by the
15 parties to November 6, 2014.

16 On November 6, 2014, a full public hearing was convened before a duly authorized
17 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant
18 appeared through its officers and the Respondent and Staff appeared with counsel. Members of the
19 public made public comment and an attorney for the Town of Carefree ("Town") appeared, and
20 indicated that the Town was not seeking intervention in the proceeding. After the completion of the
21 presentation of evidence, the matter was taken under advisement pending the submission of a
22 Recommended Opinion and Order to the Commission. Although the parties made closing statements
23 at the hearing, the Complainant filed post-hearing comments which were responded to by the
24 Company.

25 On November 25, 2014, the Town (19 days after the conclusion of the hearing) filed a Motion
26 to Intervene and to Re-Open Evidence.

27 On December 3, 2014, the Company filed a response in opposition to the Town's motion.
28 There were no responses filed by either the Complainant or Staff.

1 The record in this matter is closed and is under advisement, pending the issuance of a
2 Recommended Opinion and Order. Under the circumstances, the Town's Motion is not timely and
3 would be unduly burdensome and should be denied.

4 IT IS THEREFORE ORDERED that the Town of Carefree's Motion to Intervene and to Re-
5 Open Evidence is hereby denied.

6 IT IS FURTHER ORDERED that, pursuant to A.A.C. R14-2-609(A), that Liberty Utilities
7 Corporation f/k/a Black Mountain Sewer Corporation shall not terminate service to the Complainant
8 until a Decision by the Commission in this proceeding, as previously ordered.

9 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
10 Communications) continues to apply to this proceeding as the matter is set for public hearing, and
11 shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

12 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
13 of the Arizona Supreme Court and A.R.S. §40-243 with respect to the practice of law and admission
14 *pro hac vice*.

15 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
16 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
17 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
18 to appear at all hearings, procedural conferences, Open Meetings for which the matter is scheduled
19 for discussion, unless counsel has previously been granted permission to withdraw by the
20 Administrative Law Judge or Commission.

21 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
22 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
23 hearing.

24 DATED this 9TH day of December, 2014.

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MARC E. STERN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing emailed/mailed/delivered
this 9th day of December, 2014 to:


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